

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANITA M. NOVAK,

Plaintiff,

v.

MARK NOVAK,

Defendant.

Case Number 22-12427

Honorable David M. Lawson

Magistrate Judge Anthony P. Patti

ORDER ADOPTING REPORT AND RECOMMENDATION
AND REMANDING CASE TO STATE COURT

Presently before the Court is the report issued on October 27, 2022 by Magistrate Anthony P. Patti pursuant to 28 U.S.C. § 636(b). The report recommends that the Court dismiss the plaintiff's notice of removal and dismiss her attempted complaint for damages for lack of subject-matter jurisdiction. The plaintiff's failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the matter. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the magistrate judge, although the remedy he proposes is not dismissal of this action. Rather, it is to remand the case to state court. When the removal of a case to federal court is improper because of lack of subject matter jurisdiction, the proper course of action is remand, not dismissal. 28 U.S.C. § 1447(c); *Chase Manhattan Mortg. Corp. v. Smith*, 507 F.3d 910, 913 (6th Cir. 2007). Insofar as the plaintiff's suit papers are construed as a complaint for damages, the complaint will be dismissed.

Accordingly, it is **ORDERED** that the report and recommendation (ECF No. 8) is **ADOPTED**.

It is further **ORDERED** that the case is **REMANDED** to the Macomb County circuit court for want of subject-matter jurisdiction.

It is further **ORDERED** that the plaintiff's "complaint for damages" is **DISMISSED WITHOUT PREJUDICE**.

It is further **ORDERED** that the plaintiff's petition for attorney's fees (ECF No. 10) is **DENIED AS MOOT**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: November 16, 2022